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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CHARLES HENRY ROBERTS,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

CASE NO. C24-5507JLR

ORDER

15 Before the court is Plaintiff Charles Henry Roberts's motion for a certificate of
16 appealability. (Mot. (Dkt. # 16).) Defendant the State of Washington (the "State") did
17 not respond to Mr. Roberts's motion before the November 12, 2024 deadline. (*See*
18 *generally* Dkt.); *see* Local Rules W.D. Wash. LCR 7(d)(3) (requiring the moving party to
19 file opposition papers no later than 15 days after the filing date for most civil motions).
20 The court considers the State's failure to respond to the motion as an admission that the
21 motion has merit, *see* Local Rules W.D. Wash. LCR 7(b)(2), and GRANTS Mr.
22 Roberts's motion.

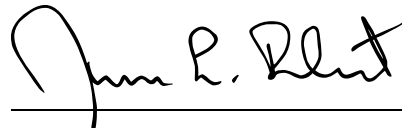
1 On September 30, 2024, the court issued an order in which it adopted Magistrate
2 Judge Theresa L. Fricke's report and recommendation in its entirety, overruled Mr.
3 Roberts's objections to the report and recommendation, dismissed Mr. Roberts's petition
4 for writ of *coram nobis* for lack of subject matter jurisdiction, and denied Mr. Roberts's
5 motion to stay and abey his petition and application to proceed *in forma pauperis* as
6 moot. (9/30/24 Order (Dkt. # 13); *see* R&R (Dkt. # 10); Roberts Obj. (Dkt. # 11);
7 Petition (Dkt. # 1); Mot. to Stay (Dkt. # 3); IFP App. (Dkt. # 5).) The court did not,
8 however, address whether a certificate of appealability should issue. (*See generally*
9 9/30/24 Order.) The court entered judgment on October 1, 2024. (Judgment (Dkt. # 14).)

10 On October 25, 2024, Mr. Roberts filed a notice of appeal and the instant motion
11 for a certificate of appealability. (NOA (Dkt. # 15); Mot.) On October 31, 2024, the
12 Ninth Circuit Court of Appeals issued a docketing notice in which it stated that "[n]o
13 briefing schedule will be set until [the Ninth Circuit] and/or the district court determines
14 whether a certificate of appealability (COA) should issue." (9th Cir. Notice (Dkt. # 17).)

15 Mr. Roberts seeks a certificate of appealability "on the question of this [c]ourt's
16 jurisdiction to consider a writ of *coram nobis* regarding a state court conviction." (Mot.
17 at 1.) He argues that the authority on which the court based its decision to dismiss his
18 petition is persuasive, rather than binding precedent, and thus the Ninth Circuit should
19 consider the matter. (*See id.* at 2-3.) The court is persuaded that "jurists of reason could
20 disagree with [this] court's resolution of [Mr. Roberts's] constitutional claims or that
21 jurists could conclude the issues presented are adequate to deserve encouragement to
22 proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Therefore, the court

1 GRANTS Mr. Roberts's motion for a certificate of appealability (Dkt. # 16) and ISSUES
2 a certificate of appealability on the question of whether a federal district court has
3 jurisdiction to consider a petition for writ of *coram nobis* to correct a state court
4 conviction.

5 Dated this 13th day of November, 2024.

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8 JAMES L. ROBART
9 United States District Judge
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